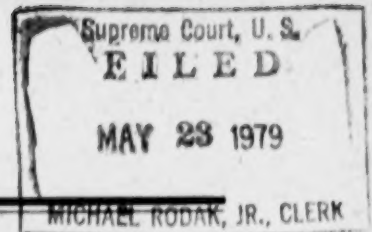


No. 78-910



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**In the Supreme Court of the United States**

**OCTOBER TERM, 1978**

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**OCCIDENTAL OF UMM AL QAYWAYN, INC., PETITIONER**

**v.**

**CITIES SERVICE OIL CO., ET AL.**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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## INDEX

	Page
Question presented .....	1
Statement .....	1
Argument .....	4
Conclusion .....	13
Appendix A .....	1a-5a
Appendix B .....	6a-7a

## CITATIONS

### Cases:

<i>American Banana Co. v. United Fruit Co.</i> , 213 U.S. 347 .....	13
<i>Baker v. Carr</i> , 369 U.S. 186 .....	9
<i>Banco de Espana v. Federal Reserve Bank of New York</i> , 114 F. 2d 438 .....	12
<i>Banco National de Cuba v. Sabbatino</i> , 376 U.S. 398 .....	8, 13
<i>Estonian State Cargo &amp; Passenger S.S. Line v. United States</i> , 116 F. Supp. 447 .....	12
<i>Foster v. Neilson</i> , 27 U.S. (2 Pet.) 253 .....	7
<i>Jones v. United States</i> , 137 U.S. 202 .....	8
<i>Pasos v. Pan American Airways</i> , 229 F. 2d 271 .....	12
<i>Republic of Iraq v. First National City Bank</i> , 241 F. Supp. 567 .....	13
<i>Rhode Island v. Massachusetts</i> , 37 U.S. (12 Pet.) 657 .....	8

## Cases—Continued:

<i>Ricaud v. American Metal Co.</i> , 246 U.S. 304 .....	13
<i>Stifting, Carl Zeiss v. V.E.B. Carl Zeiss, Jena</i> , 293 F. Supp. 892 .....	12
<i>Underhill v. Hernandez</i> , 168 U.S. 250 .....	12
<i>United States v. Alaska</i> , 422 U.S. 184 .....	6
<i>United States v. Texas</i> , 143 U.S. 621 .....	7, 8
<i>Williams v. Suffolk Insurance Co.</i> , 38 U.S. (13 Pet.) 225 .....	13
<i>Zwack v. Kraus Brothers &amp; Co.</i> , 237 F. 2d 255 .....	12

## Treaty and statute:

Convention on the Continental Shelf, 15 U.S.T. 471	
Article 1 .....	10
Article 2, Section 3 .....	11
Article 6, Section 1 .....	10
Iranian Law of June 9, 1955, Article 2, U.N. Legislative Series, National Legislation and Treaties Relating to the Territorial Sea, the Contiguous Zone, and Continental Shelf (1970) .....	10-11
Hickenlooper Amendment, 22 U.S.C. 2370(e)(2) .....	4, 12

## Miscellaneous:

U.S. Department of State, Bureau of Intelligence and Research, Limits in the Seas, No. 24 <i>Continental Shelf Boundary Iran-Saudi Arabia</i> (July 1970) .....	11
U.S. Department of State, Bureau of Intelligence and Research, Limits in the Seas, No. 25 <i>Continental Shelf Boundary Iran-Qatar</i> (July 1970) .....	11

*In the Supreme Court of the United States*

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

---

This brief is submitted in response to the Court's invitation of February 26, 1979.

**QUESTION PRESENTED**

Whether, in the context of this case, the courts of the United States may adjudicate a controversy between private parties that would require the determination of a maritime boundary dispute between foreign nations.

**STATEMENT**

This case concerns the ownership of oil that has been extracted from a concession area located in the Persian Gulf and imported to the United States by respondents. The action was initiated by petitioner, Occidental of Umm Al Qaywayn, Inc. ("Occidental"),

which attached the oil upon its entry into this country. All parties to the litigation are United States corporations.

1. In November 1969, petitioner obtained a concession to extract oil from a seabed area in the Persian Gulf from the Trucial Sheikhdome of Umm Al Qaywayn, located on the southwestern coast of the Persian Gulf. It is alleged that this concession area extended from the coast of Umm Al Qaywayn to within three miles of the island of Abu Musa, which is located approximately half-way, or 45 miles, across the Persian Gulf from Umm Al Qaywayn toward Iran. Petitioner alleges that the extent of its concession area was determined, in part, by an agreement or understanding between Umm Al Qaywayn and the neighboring Sheikhdome of Sharjah (which claimed ownership of the island of Abu Musa) under which the latter agreed to assert only a three-mile territorial sea for the island.

After obtaining its concession, petitioner commenced exploratory operations and, in 1970, discovered a productive oil field located approximately nine miles from Abu Musa and within the claimed concession area.

Shortly after petitioner obtained its concession, Buttes Oil Company obtained a similar concession from Sharjah to extract oil from the seabed area subject to the jurisdiction of Sharjah. This concession included the territorial waters surrounding the island of Abu Musa. In 1970, Sharjah published a decree (which petitioner claims was "back-dated" to September 1969 (Pet. 7)) by which it claimed a territorial sea of 12 miles surrounding the island of Abu Musa. The territorial sea thus proclaimed encompassed the productive oil field that petitioner had then recently discovered on the floor of the Persian Gulf.

2. Before Umm Al Qaywayn and Sharjah could resolve their territorial claims in the Persian Gulf seabed, the situation was further complicated by the reinstatement of a historical claim to the island of Abu Musa by Iran. Iran claimed that Abu Musa and two other islands located in the mouth of the Persian Gulf were historically Iranian territory and also announced that the islands possess a 12-mile territorial sea that is also within Iranian sovereignty. Iran notified petitioner in May 1970 that it must cease all operations within these claimed territorial waters, and petitioner did so (Pet. App. A-5).

3. In 1971, Iran and Sharjah entered into an agreement toward resolving their dispute over the ownership of Abu Musa. Pursuant to this agreement, (1) Iran occupied the island with military troops, (2) the oil concession granted to Buttes by Sharjah was ratified by Iran, (3) Sharjah and Iran agreed to divide equally all royalties on oil extracted from the concession area, and (4) both nations agreed that the Buttes concession area extended to the limits of the territorial waters of the island of Abu Musa, which they claimed to reach 12 miles from the island. Subsequently, Umm Al Qaywayn and Sharjah also resolved their dispute over this seabed area, under an agreement by which Sharjah agreed to pay thirty percent of its oil royalties from the disputed area to Umm Al Qaywayn.

These events evidently strained the previously amicable relations between petitioner and Umm Al Qaywayn. In June 1973, Umm Al Qaywayn terminated petitioner's concession for failure to make certain royalty payments (Pet. App. A-6).

In 1974, respondents began to extract oil from the productive area that petitioner had discovered and to



ship it to the United States. Petitioner attached the oil as it entered American ports. The oil has been released by agreement of the parties pending the outcome of this litigation (Pet. App. A-6 & n.3).

4. The district court granted respondents' motion for summary judgment. The court held that petitioner's claim of superior title to the oil was based on a challenge to the lawfulness of the acts of foreign sovereigns and was therefore barred by the act of state doctrine (Pet. App. B-12 to B-16). The court ruled that the Hickenlooper Amendment, 22 U.S.C. 2370(e)(2), did not remove the bar of the act of state doctrine in this case (1) because the agreement of sovereigns to resolve an existing territorial dispute did not constitute a "confiscation" of any claims in the disputed area, (2) because the Amendment does not apply to contract claims such as concession rights, (3) because petitioner's concession had been cancelled by Umm Al Qaywayn *before* the attached oil was extracted, and (4) because the court cannot resolve a boundary dispute between foreign nations. (Pet. App. B-18 to B-21).

The court of appeals concluded that petitioner's claim was nonjusticiable. It held that the resolution of the foreign boundary dispute in this case presented a political question that the courts of the United States may not determine (Pet. App. A-9 to A-17).

#### ARGUMENT

The monetary stakes in this case are substantial, and the question presented with respect to the scope of the judicial function is both important and sensitive. But the decision of the court of appeals is correct, and it does not conflict with the decisions of this Court or of any court of appeals. Moreover, the factual context of this litigation is unusual, and there is nothing to

suggest that the issue presented here is likely to recur with any regularity, if at all. We therefore submit that review by this Court is not warranted.

1. Assuming, as we do, that petitioner obtained a concession from Umm Al Qaywayn to extract oil in the disputed area, the initial question posed in this litigation is whether Umm Al Qaywayn had power or authority to grant any concession in that area. Petitioner contends that, at least vis-a-vis Sharjah, Umm had such authority because there was a prior understanding or agreement between Umm and Sharjah that limited to three miles the territorial sea of Abu Musa. Petitioner contends that any more recent claims by Sharjah to a 12-mile territorial sea are in conflict with the previous understanding between these two sovereigns (Pet. 6-10). While petitioner does not assert that Sharjah could not "annex" this additional territory, petitioner insists that, when Sharjah did so, it was obligated by international law to respect petitioner's "vested concession rights" in the area (Pet. 10).

We may assume, *arguendo*, that the claim recited thus far, based as it is on an alleged agreement between sovereigns, might be determined in a court of the United States.<sup>1</sup> But there is nothing in the record to suggest that Iran also had agreed to limit its sovereign claims to Abu Musa and the adjacent seabed. For at least a century, Iran has claimed

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<sup>1</sup>For reasons discussed below (pages 7 to 9), such a claim would be justiciable only if it were based on proof of an existing sovereign agreement to allocate the continental shelf in the manner asserted or on a declaration by the Executive Branch recognizing the foreign boundaries. The latter is plainly lacking, and it would appear that the former could not be established.

sovereignty over Abu Musa. In 1892 and 1897, Iranian sovereignty over the island was recognized in unofficial British survey maps, and in 1904 Iranian officials temporarily occupied the island (Pet. App. A-3). Iran removed these officials at Britain's urging but did not abandon its claim to the island (*ibid.*). When the British protectorate over the Trucial Sheikdoms was approaching termination in 1971, Iran renewed its historic claim to Abu Musa and, upon reaching agreement with Sharjah, occupied the island and adopted Buttes as its concessionaire. In doing so, Iran announced that the waters within 12 miles of Abu Musa, including the disputed concession area, were within its sovereign territory (*id.* at A-4 to A-5).

a. The United States agrees with petitioner (Pet. 14-16) that, if this case involved *only* the question of the validity of the claim of a 12-mile territorial sea for Abu Musa, the case might be justiciable.<sup>2</sup> The United States does not recognize unilateral claims for territorial seas in excess of three miles from the coast-line. Indeed, the United States has objected to the 12-mile claim for Abu Musa asserted by Sharjah and Iran

<sup>2</sup>In its brief as *amicus curiae* in the court of appeals, the United States argued that disputes over the seaward limits of territorial waters raise a political question. To the extent that the brief suggested that every such dispute does so, it was incorrect. As petitioner points out (Pet. 14-16), the United States does not recognize unilateral sovereign claims to territorial seas beyond three miles. The United States does recognize that a nation may, under international law, claim jurisdiction over waters that would otherwise be high seas on the basis of an historic exercise of jurisdiction over those waters. See, e.g., *United States v. Alaska*, 422 U.S. 184 (1975). However, a dispute between foreign nations over such a claim would, in the absence of a determination by the Executive, be nonjusticiable for reasons similar to those discussed at pages 7 to 9, *infra*.

in this controversy.<sup>3</sup> Since the United States does not recognize a claim of sovereignty based on a territorial sea in excess of three miles, the courts may reject on the merits an otherwise justiciable claim based on Iranian sovereignty in the disputed area which rests on this basis alone. See *United States v. Texas*, 143 U.S. 621, 638-639 (1892); *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 307, 309 (1829).

b. But the question of sovereignty in the disputed area does not rest simply on the extent of the territorial sea of Abu Musa. The disputed area is located approximately 40 miles from Umm Al Qaywayn and nine miles from Abu Musa; it is thus, in our view, not within the territorial sea of any sovereign. The area could be subject to the sovereignty of Iran, Sharjah, or Umm Al Qaywayn only by application of the continental shelf doctrine, and not as a result of any present claim based on a territorial sea. As the court of appeals stated (Pet. App. A-13),

<sup>3</sup>In 1970, the United States notified Sharjah and Iran that it would not recognize any claims based on a 12-mile territorial sea surrounding Abu Musa (App. A, *infra*, 1a-5a). At the same time, the United States noted that this objection was "without prejudice to the sovereign rights of the coastal state to explore and exploit the natural resources of the continental shelf extending from its coast \* \* \*" (*id.* at 5a). The United States also noted that the objection to claims based on territorial sea did not (*id.* at 3a-4a)

imply approval of any claim by Umm al Qaiwain to sovereign rights over the continental shelf up to a distance of 3 miles from the coast of Abu Musa. Division of the shelf area by agreement of the states involved is the preferred approach consistent with existing international law and such mode of division is supported by the U.S. Pending such agreement, the U.S. takes no position with respect to where the line or lines delimiting the shelf of the Gulf should be drawn.

"to determine whether a tortious conversion has occurred, it is necessary to determine the sovereign ownership of the portion of the continental shelf from which the oil was extracted." And "[i]t is evident from the record \* \* \* that the sovereignty [of] Abu Musa, and, derivatively, its continental shelf was in dispute between Iran and Sharja (through Great Britain). Therefore, in order to resolve [petitioner's] right to possess the oil, [the court] would have to resolve the dispute over Abu Musa" (*id.* at A-11).<sup>4</sup>

The court of appeals correctly concluded that the "resolution of [such] a territorial dispute between sovereigns" is a political question which, in the absence of an Executive determination of sovereignty, the courts may not adjudicate (*ibid.*). This conclusion is supported by dicta in several decisions of this Court. See, e.g., *United States v. Texas*, *supra*, 143 U.S. at 638-639; *Jones v. United States*, 137 U.S. 202, 212 (1890) ("Who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments \* \* \* conclusively binds the judges \* \* \*"); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 744-745 (1838).<sup>5</sup> It is also supported by

<sup>4</sup>If Sharjah had sovereignty over Abu Musa, petitioner contends that Sharjah had limited its claims to the surrounding seabed by prior agreement. See page 5, *supra*. There is no such alleged limitation on the sovereign claims of Iran.

<sup>5</sup>See also *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 461 & n. 20 (1964) (White, J., dissenting):

[W]ithout doubt political matters in the realm of foreign affairs are within the exclusive domain of the Executive Branch, as, for example, issues for which there are no available standards or which are textually committed by the Constitution to the executive \* \* \*. These issues include \* \* \* the territorial boundaries of a foreign state \* \* \*.

an analysis of the factors established by the Court in *Baker v. Carr*, 369 U.S. 186, 210-211 (1961), as relevant to the identification of a political question.

The United States has consistently declined to take a position on the merits of conflicting continental shelf claims by foreign sovereigns, and in 1970 the United States specifically communicated to Iran and Great Britain its neutrality on the particular dispute involved in this case. See note 3, *supra*; App. A, *infra*, 1a-5a. It has been our foreign policy to respect agreements among nations establishing continental shelf boundaries, but not to recognize sovereign claims that remain in dispute. A determination of such conflicting claims by the courts of this country would conflict with this policy of non-recognition—with this "political decision already made," *Baker v. Carr*, *supra*, 369 U.S. at 217—and would embarrass the United States in the conduct of its foreign policy.<sup>6</sup>

2. Petitioner claims (Pet. Reply Mem. 2-10) that this case does not present any question concerning territorial border disputes because (a) Abu Musa, as an island, is not entitled to a continental shelf, and (b) Iran's claim to the waters surrounding Abu Musa was not based on a claimed continental shelf for the island but on a claimed 12-mile territorial sea (a claim which we agree may be justiciable, see page 7, *supra*).

<sup>6</sup>This concern is especially cogent here because, after the United States expressed its neutrality on this dispute, Iran, Sharjah, and Umm Al Qaywayn reached agreement among themselves on a division of the royalties obtained from oil production in the disputed area. A decision from the courts of the United States could undermine the stability that was obtained as a result of this sovereign agreement.



a. Even if the courts of this country could decide that Abu Musa was not entitled to a continental shelf, the political question of sovereignty over the disputed seabed area would remain. The area in dispute lies approximately half way across the Persian Gulf between Iran and Umm Al Qaywayn, though it is somewhat closer to Umm. There would be no obstacle to an Iranian claim to a continental shelf from its mainland that extended this far, though, of course, it would ordinarily be disputed by the other sovereign.<sup>7</sup> See Article 6, Section 1, of the Convention on the Continental Shelf, 15 U.S.T. 471, 474.

In any event, the United States has recognized that islands have continental shelves. Article 1 of the Convention on the Continental Shelf, 15 U.S.T. 471, 473, makes this express:

For the purpose of these Articles, the term 'continental shelf' is used as referring \* \* \* to the seabed and subsoil of \* \* \* submarine areas adjacent to the coasts of islands.

Moreover, as early as 1955, Iran asserted a continental shelf claim for its islands in the Persian Gulf.<sup>8</sup> There is

<sup>7</sup>The term "continental shelf" extends to submarine areas with a depth of less than 200 metres, or to deeper areas where exploitation of natural resources remains possible. Article 1 of the Convention on the Continental Shelf, 15 U.S.T. 471, 473. This definition encompasses the entire Persian Gulf. See App. A, *infra*, 4a.

<sup>8</sup>An Iranian statute adopted in 1955 provides:

The areas as well as natural resources of the seabed and of the marine subsoil as far as the limits of the continental shelf extend from the coasts of Iran and of those Iranian islands in the Persian Gulf and in the sea of Oman,

thus no basis for the courts of the United States to conclude that Abu Musa lacks a continental shelf.

b. Iran, of course, is not a party to this litigation. The fact that Iran has not submitted evidence of its continental shelf claim to the disputed area should thus occasion no surprise. It is true, nonetheless, that Iran's continental shelf claims extend to the disputed area, and the record substantiates this fact.

Article 2, Section 3, of the Convention on the Continental Shelf provides that "[t]he rights of the coastal State over the continental shelf do not depend on occupation \* \* \* or on any express proclamation." 15 U.S.T. at 473. Iran, however, has in fact made an express proclamation of its claim to a continental shelf for its Persian Gulf islands. See note 9, *infra*. The Iranian claim is referred to in documents cited in Pet. Reply Mem. (pages 9-10). See U.S. Department of State, Bureau of Intelligence and Research, Limits in the Seas, No. 24 *Continental Shelf Boundary Iran-Saudi Arabia* (July 1970); and No. 25 *Continental Shelf Boundary Iran-Qatar* (July 1970). See also Resp. Br. in Opp. 11.

The conflicting continental shelf claims of Iran and Umm Al Qaywayn are, indeed, an essential element of this case.<sup>9</sup> It is basic to petitioner's theory of this case that sovereignty over the disputed area is to be

appertain to the Iranian Government and are under the sovereignty of the Government of Iran.

Iranian Law of June 19, 1955, Article 2. See U.N. Legislative Series, National Legislation and Treaties Relating to the Territorial Sea, the Contiguous Zone, and Continental Shelf (1970).

<sup>9</sup>The agreement between Umm and Sharjah upon which petitioner relies (Pet. 6) purports to delimit the rights of Sharjah and Umm in their continental shelves and is evidence of claims

determined by the continental shelf doctrine, because the disputed area is so far from any coast line (including Abu Musa) that no other doctrine is applicable. The fact that the citations in the record predominantly refer to the Iranian claims as being premised on the territorial sea, rather than the continental shelf, of Abu Musa, does not alter the substance of the underlying political dispute. That dispute centers on the political question whether the continental shelf of Iran—either of mainland Iran or of Abu Musa as an Iranian possession—or of Umm Al Qaywayn extends to the area from which the oil that has been attached was produced.<sup>10</sup>

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by both countries to their continental shelves. The concession agreements issued by both Sharjah and Umm purported to grant rights in their respective continental shelves. *E.g.*, Pet. 10; Pet. Reply Mem. 4-5 n.6.

<sup>10</sup>Petitioner is incorrect in suggesting (Pet. 26-30) that the political question presented in this case is, in substance, no more than an act of state question which the courts must decide under the Hickenlooper Amendment, 22 U.S.C. 2370(e)(2). Where the act of state doctrine applies, it requires courts of the United States to recognize the validity of public acts of a recognized foreign sovereign within the territory of that sovereign. *Underhill v. Hernandez*, 168 U.S. 250, 253 (1897); *Pazos v. Pan American Airways*, 229 F. 2d 271 (2d Cir. 1956); *Banco de Espana v. Federal Reserve Bank of New York*, 114 F. 2d 438 (2d Cir. 1940). The act of state doctrine does not bar examination of the acts of sovereigns taken outside their sovereign territory. *Zwack v. Kraus Bros. & Co.*, 237 F. 2d 255 (2d Cir. 1956); *Estonian State Cargo & Passenger S.S. Line v. United States*, 116 F. Supp. 447, 451 (Ct. Cl. 1953); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 293 F. Supp. 892 (S.D.N.Y. 1968); *Republic of Iraq v. First*

## CONCLUSION

The United States submits that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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BRUCE C. RASHKOW  
*Attorney*

MARK B. FELDMAN  
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*Department of State*

MAY 1979

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*National City Bank*, 241 F. Supp. 567 (S.D.N.Y. 1965). Thus, before a court can determine whether the act of state doctrine applies, it must determine whether the sovereign actions have occurred within that sovereign's territory. See *American Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909); *Williams v. Suffolk Insurance Co.*, 38 U.S. (13 Pet.) 415 (1839). Consequently, courts cannot decide in a case such as this that the act of state doctrine is applicable until it is first determined who is sovereign in the disputed area. It is that initial determination of a territorial boundary dispute among sovereigns that constitutes the political question.

Moreover, the act of state doctrine is a rule of decision, not of jurisdiction. Under the act of state doctrine the courts give presumptive validity to sovereign actions and enter judgments on the merits accordingly. *E.g.*, *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 (1964); *Ricaud v. American Metal Co.*, 246 U.S. 304 (1918). By contrast, application of the political question doctrine forestalls adjudication of the merits because that determination can be made appropriately and effectively only by the political branches of government.

## APPENDIX A

TO : AMEMBASSY LONDON  
 INFO : AMEMBASSY TEHRAN  
       " JUDDA  
       " KUWAIT  
       AMCONSUL DHAHRAN

FROM : Department of State

SUBJECT : Territorial Sea Claims of Sharjah and  
 Iran in Connection with the Abu Musa  
 Problem.

## REF :

1. On June 1 Iranian Embassy delivered note to Department (Annex 1) requesting Department contact Occidental and Buttes in effort to persuade them not to engage in operations in areas which constitute Iranian territory. Iranian note includes assertion of sovereign rights over territorial sea of Abu Musa including area in dispute between two oil companies. Since Iran claims territorial sea of 12 miles, this assertion has effect of claiming sovereignty around Abu Musa out to 12 miles from the coast. In view of this fact, Department has decided our reply (Annex 2) should include reaffirmation of traditional U.S. non-recognition of territorial sea claims in excess of three miles. Department's reply note is being delivered to Iranian Embassy next week.

2. To be consistent, and so as not to single out Iran in this matter, Department has decided to send similar note to U.K. FCO protesting Sharjah's decree of September 10, 1969 and the Supplemental Decree of April 5, 1970. Accordingly Embassy London is instructed to deliver note per Annex 3 to FCO.

3. The following background information is intended for posts' use in connection with Annexes 2 and 3:

A. The United States has traditionally taken the position that under international law it is not bound to recognize claims to territorial waters of more than three nautical miles from the coast. The United States maintains that position today. Recently, however, the United States has announced its support for a new international convention setting the breadth of the territorial sea at 12 miles, guaranteeing free transit through and over international straits, and accommodating the special interests of coastal states in fisheries beyond the maximum permissible breadth of the territorial sea. There has been no RPT no endorsement by the United States of a 12-mile territorial sea determined by unilateral rather than international action.

B. With respect to the exercise of sovereign rights over the continental shelf as they relate to exploration and exploitation of the natural resources of the seabed and subsoil of the continental shelf, the United States is bound by and subscribes to the 1958 Geneva Convention on the Continental Shelf. Under the formula of Articles 1 and 2 of that Convention, a state's sovereign rights with respect to exploration and exploitation of the natural resources of the seabed and subsoil of the continental shelf in high seas areas beyond the limits of its territorial sea extend to a water depth of 200 meters, or beyond that point to where the superjacent waters admit of exploitation of the natural resources of the area. This formula applies to high seas areas only. A state's sovereignty within its territorial waters over the natural resources of the seabed and subsoil below those waters is complete.



Thus, a recognition by one state of an extension of another state's territorial sea entails a recognition of that state's ownership over the natural resources of the seabed areas below the territorial sea.

C. Although a state's sovereign rights over seabed natural resources coincide with its exercise of sovereignty in territorial waters, the two concepts are different with respect to high seas areas which are those beyond the maximum permissible breadth of the territorial sea. Under the depth and exploitability criteria of the Convention on the Continental Shelf and customary rules of international law, distance from shore or from the seaward limit of the territorial sea is not determinative of the extent of national jurisdiction with respect to exploration and exploitation of the continental shelf and its natural resources. There is, for example, no theory recognized by international law which permits a state to exercise exclusive jurisdiction with respect to exploitation of the natural resources of the seabed and subsoil beneath its contiguous zone as defined by the Convention on the Territorial Sea and the Contiguous Zone. The language of that Convention specifically provides that the contiguous zone constitutes an area of the high seas and this is not subject to the sovereignty of any state.

D. With particular reference to the situation of Abu Musa, failure of the United States to recognize Sharjah's claimed extension of the territorial sea to 12 miles or Iran's pre-existing claim does not prejudice either's position with respect to sovereign rights over the continental shelf if and when the sovereignty issue with respect to the island proper is settled. In no way RPT no way does the U.S. position concerning Sharjah's or Iran's territorial sea claims imply approval

of any claim by Umm-al-Qaiwain to sovereign rights over the continental shelf up to a distance of 3 miles from the coast of Abu Musa. Division of the shelf area by agreement of the states involved is the preferred approach consistent with existing international law and such mode of division is supported by the U.S. Pending such agreement, the U.S. takes no position with respect to where the line or lines delimiting the shelf of the Gulf should be drawn. This is particularly so in view of the fact that under the formula of the Continental Shelf Convention all of the Persian Gulf is "shelf" since all the waters of the Gulf are less than 200 meters deep.

4. The above information is intended for the Embassy's background use in responding to questions. If any problem arises with respect to the U.S. position on these matters which is not dealt with in the above discussion, the Embassy should request an opinion from the Department

/s/ Johnson, Acting  
JOHNSON, ACTING

Annexes:  
(Enclosures)

1. Iranian Note.
2. Department's reply.
3. Draft note.



### ANNEX 3

[Complimentary opening] and refers to the Decrees dated September 10, 1969, and April 5, 1970, purporting to establish the territorial waters of Sharjah at twelve nautical miles measured from the baselines of the coasts of the mainland and of the islands of the Emirate of Sharjah.

Without comment on the existing dispute with respect to sovereignty over the island of Abu Musa to which the subject Decrees also apply, and without prejudice to the sovereign rights of the coastal state to explore and exploit the natural resources of the continental shelf extending from its coast, the United States "reserves its rights and those of its nationals in all areas of superjacent waters referred to in the September 10 and April 5 Decrees seaward of the traditional three-mile limit."

The Government of the United States would be most grateful if Her Majesty's Government would kindly communicate the above information to the Ruler of Sharjah.

[Complimentary close].

### APPENDIX B

THE LEGAL ADVISER  
DEPARTMENT OF STATE  
WASHINGTON

May 12, 1978

Honorable James W. Moorman  
Assistant Attorney General  
Land and Natural Resources Division  
Department of Justice  
Washington, D.C.

Dear Mr. Moorman:

Your Division has asked for our views concerning certain aspects of the case of *Occidental of Umm Al Qaiwain, Inc. v. A certain Cargo of Petroleum Laden Aboard the Tanker "Dauntless Colocotonic," Etc., et al., C.A. 5, No. 75-3088.*

It is our understanding that the disposition of this case would require a determination of the disputed boundary between Umm Al Qaiwain on the one hand and Sharjah and Iran on the other at the time Umm Al Qaiwain granted the concession in issue to Occidental. It is our view that it would be contrary to the foreign relations interests of the United States if our domestic courts were to adjudicate boundary controversies between third countries and in particular that controversy involved here.

The extent of territorial sovereignty is a highly sensitive issue to foreign governments. Territorial disputes are generally considered of national significance and politically delicate. Even arrangements for the peaceful settlement of territorial differences are often a matter of continued sensitivity.

These considerations are applicable to the question of Umm Al Qaiwain's sovereignty over the continental shelf surrounding Abu Musa at the time of the concession to Occidental and to the subsequent arrangements worked out among the affected states. For these reasons, the Department of State considers that it would be potentially harmful to the conduct of our foreign relations were a United States court to rule on the territorial issue involved in this case.

We believe that the political sensitivity of territorial issues, the need for unquestionable U.S. neutrality and the harm to our foreign relations which may otherwise ensue, as well as the evidentiary and jurisprudential difficulties for a U.S. court to determine such issues, are compelling grounds for judicial abstention.

We do not believe that this judicial self-restraint should turn on such analytical questions as whether the so-called Act of State doctrine which is traditionally limited to governmental actions within the territory of the respective state can apply to an exercise of disputed territorial jurisdiction. It rather follows from the general notion that national courts should not assume the function of arbiters of territorial conflicts between third powers even in the context of a dispute between private parties. As a result, we are of the view that the court should be encouraged to refrain from setting the extent of Umm Al Qaiwain's sovereign rights in the continental shelf between its coast and Abu Musa at the time of its grant of the concession to Occidental.

Sincerely,

Herbert J. Hansell